

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015111055

ORDER DETERMINING ISSUES  
THREE AND SIX OF STUDENT'S  
AMENDED DUE PROCESS  
COMPLAINT TO BE SUFFICIENT

Student filed an amended due process hearing request (amended complaint) on March 11, 2016, naming the Oakland Unified School District. On that same date, Oakland timely filed a notice of insufficiency. Oakland contends that issues three and six of the amended complaint are insufficient as pled.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.” (Sen. Rep. No. 108-185, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991 [nonpub. opn.]; *Escambia County Bd. of Educ. v.*

*Benton* (S.D. Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

## DISCUSSION

In issue three, Student contends that Oakland denied him a free appropriate public education by failing to present the results of a testing instrument called the Behavior Assessment System for Children (referred to by Student in his amended complaint by its acronym, the “BASC”) at an individualized education plan team meeting held in 2012. Student also contends that Oakland denied him a FAPE by failing to include the test and the test protocols in his school records.

Oakland contends that issue three is insufficient for two reasons. First, Oakland states that issue three partially concerns an IEP team meeting that took place in November 2012, which is outside the applicable two-year statute of limitations. Oakland contends that Student has failed to plead an exception to the statute of limitations and therefore, the issue is insufficient. However, whether an issue raises allegations outside of the statute of limitations is not a proper focus of a notice of insufficiency. Rather, the inquiry is whether the complaint provides a description of the problem related to a matter covered under the Individuals with Disabilities Education Act, provides facts relating to the problem, and a proposed resolution. Student has met this standard in issue three. Oakland’s concerns about the applicability of the statute of limitations should be raised in a motion to dismiss the complaint, not in a notice of insufficiency.

Oakland also contends that issue three is insufficient because evidence demonstrates that there were no Behavior Assessment scores in existence at the time of Student’s 2012 IEP team meeting. Oakland included exhibits with its notice of insufficiency to support this argument. However, the argument begs the question of whether Student’s issue is sufficient as pled. As stated above, issue three meets the basic standard of sufficiency. In any case, the Office of Administrative Hearings does not entertain motions for summary judgment, which, in effect, Oakland has presented by including documentary evidence and a declaration in support of its notice of insufficiency. Whether the evidence supports Student’s allegations is a matter for the due process hearing.

In issue six (which is not numbered in Student’s amended complaint), Student alleges that Oakland violated his parent’s procedural rights by failing to convene an IEP team meeting within 30 days of her request for a meeting made sometime in August 2015. Oakland contends that because Student was not found eligible for special education and related services until October 23, 2015, he had no right to an IEP team meeting. Therefore,

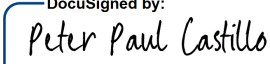
Oakland contends that issue six must be found insufficient as there is no legal basis for the allegation. Again, Oakland confuses a notice of insufficiency with a motion to dismiss. Whether Student was legally entitled to the IEP team meeting in August 2015 is not relevant to whether his issue as stated is sufficient. In issue six, Student has clearly stated an issue as well as the facts surrounding the issue (his contention that his parent requested an IEP team meeting but was not provided one within 30 days of the request), and has proposed a resolution. Student's issue six is sufficient as pled.

### ORDER

1. Issues three and six of the amended complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: March 15, 2016

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 for  
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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings